

Notice of Allowability

Application No.

10/644,178

Examiner

Alexander Grosz

Applicant(s)

BARNES, CHRISTOPHER A.

Art Unit

3673

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to APPLICATION FILED ON 8/21/03
2. ☒ The allowed claim(s) is/are 1, 4, 7
3. ☒ The drawings filed on 8/21/03 are accepted by the Examiner.
4. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) ☐ All b) ☐ Some* c) ☐ None of the:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).
 - * Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.
THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

5. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
6. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
 - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
 - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
 - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
7. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

1. ☒ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☐ Information Disclosure Statements (PTO-1449 or PTO/SB/08), Paper No./Mail Date _____
4. ☐ Examiner's Comment Regarding Requirement for Deposit of Biological Material
5. ☐ Notice of Informal Patent Application (PTO-152)
6. ☒ Interview Summary (PTO-413), Paper No./Mail Date 08/09/04
7. ☒ Examiner's Amendment/Comment
8. ☒ Examiner's Statement of Reasons for Allowance
9. ☐ Other _____

Alexander Grosz
Primary Examiner
Art Unit: 3673

EXAMINER'S AMENDMENT

An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Mr. Lingbeck on 8/6/04.

On page 7, between lines 18 and 19, insert:

–As discussed above, and clearly shown in the figures, the intermediate and upper sections, upon full inflation, are generally wedge shaped. –

On page 7, between lines 26, 27 insert:

–As discussed above, and clearly shown in the figures, upon the full inflation of the base section, the intermediate sections, and the upper sections, the head of a user is elevated approximately 30 degrees from the top wall of the base section, and the user's legs are supported on a curved leg supporting surface of the foot upper section. –

Cancel claims 1-3, 5, 6, 8.

In claim 4, line 1, change "3" to -9-.

In claim 7, line 9, change "6" to -9-.

Enter new claim 9.

9. An incline-adjustable air mattress, adapted to elevate a user's head and legs relative to a user's torso, comprising:

a base section having a top, a bottom, and a perimeter wall comprised of an endless strip being disposed along edges of said top and bottom walls and has a width which is generally uniform throughout, with a plurality of air valve members disposed in the perimeter wall, having an air chamber disposed between said top bottom, and perimeter walls;

two inflatable, generally wedge shaped intermediate sections being disposed upon and connected to said base section; two inflatable, generally wedged shaped upper sections being disposed upon and connected to said intermediate sections;

said intermediate sections comprising a head intermediate section being disposed upon a front portion of said base section, and also comprising a foot intermediate section being disposed upon a rear portion of the said base section and being spaced from said head intermediate section; the head intermediate section having a main wall, which upon full inflation of the head intermediate section is inclined approximately 15 degrees relative to the top wall of the base;

said upper sections comprising a head upper section being attached upon said head intermediate section, and also comprising foot upper section being attached upon said foot intermediate section and being spaced from said head upper section,

wherein upon the full inflation of the base section, the intermediate and upper sections, the head of a user is elevated approximately 30 degrees from the top wall of the base section, and the user's legs are supported on a curved leg supporting surface of the foot upper section.

The following is an examiner's statement of reasons for allowance: On 8/4; 8/5 and 8/6/04, Mr. Lingbeck and I discussed the invention, the claims, and the very crowded prior art, noted on page 2 of the application, and the art cited on attached PTO 892. The closest prior art is U.S. application 10/350,587 to Kasatshko filed on 1/24/03, which application was brought into the public domain as a printed publication, by its incorporation by reference into U.S. Patent Application Publication "US2004/0143906 A1", published on 7/29/04.

Kasatshko, in its figures 9 and 11, teaches the use of adjustable air mattresses, but fails to teach or suggest the very specific structure of claim 9, which limits the mattress, among other features, to two head and foot supporting, wedge shaped sections, dimensioned such that upon full inflation, support the head portion of a user at approximately 30 degrees from the horizontal, and its base section is comprised of a top, bottom; and perimeter wall with a plurality of air valves, the perimeter wall comprised of an endless strip disposed along edges of the top and bottom wall.

Mr. Lingbeck persuasively argued that in the very crowded prior art, there is no teaching or suggestion to combine teachings of the prior art to obtain the very specific structure of claim 9.

Unlike the "complicated" device of Kasatshko, the claimed device provides an approximately 30 degree head inclination, upon full inflation.

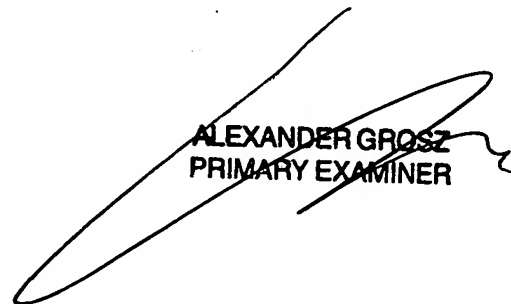
See Texas Instruments Inc. v. International Trade Commission, 26 USPQ2d 1010 (Fed. Cir. 1993); Griffin v. Bertina, 62 USPQ2d 1431 (Fed. Cir. 2002); Amazon.com Inc. v. Barnesandnoble.com Inc., 57 USPQ2d 1747 (Fed. Cir. 2001).

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Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Any inquiry concerning this communication should be directed to Alex Grosz at telephone number 703-308-2498.

Grosz/vs
August 11, 2004


ALEXANDER GROSZ
PRIMARY EXAMINER